IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Bhagu Ram vs. Durga Das & Ors.

S.B.CIVIL SECOND APPEAL NO.274/2005 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 29.4.2005 PASSED BY SHRI RAMESHWAR VYAS, ADDITIONAL DISTRICT JUDGE, DEEDWANA IN APPEAL NO.(4/1992) (120/1992) 38/1999.

DATE OF JUDGMENT ::: 11.11.2005

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. CR Jakhar, for the appellant.

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BY THE COURT:

Heard learned counsel for the appellant/plaintiff.

The appellant is aggrieved against the judgments and decrees dated 19.11.1991 and 29.4.2005 passed by the trial court and the first appellate court respectively.

According to learned counsel for the appellant, the plaintiff's suit was dismissed by the trial court and the appeal by the first appellate court on the basis of the patta issued in favour of the respondents/defendants but

the said patta was cancelled in revision against the patta preferred by one Nand Ram by the revisional authority namely, Additional Collector vide order dated 15.3.2002, therefore, the said order of competent authority is relevant for the purpose of deciding this appeal. The appellant also submitted an application under Order 41 Rule 27 CPC and also annexed the copy of order dated 15.3.2002.

According to learned counsel for the appellant, the two courts below misread the patta of the plaintiff as well as the defendants. It is submitted that the plaintiff/appellant's patta was issued prior in time and in the plaintiff's patta, there is a clear mention of way which the plaintiff is claiming. It is also submitted that the Exhibit-4A was also misread by the courts below. It is also submitted that the maps which were submitted along with the plaint clearly shows that the property in dispute can only be a land of way.

I have considered the submissions of learned counsel for the appellant and perused the record as well as the facts and the reasons given by the two courts below.

It is clear from the facts of the case that the plaintiff filed suit for declaration and injunction on the basis of the claim of his right of way over the property in dispute. The courts below while deciding the issues no.1 and 2 considered the evidence as well as the Commissioner's report. It will be worthwhile to mention here that the court also inspected the site. On the basis of all

evidence, the Courts below reached to the conclusion that the claim of the plaintiff of having way there appears to be not finding support from the documentary evidence as well as from the factual position on spot. This finding of fact was upheld by the appellate court with detailed reasons. The documents were fully considered by the two courts below and in view of the above fact whether there was a patta in favour of the defendant for the land in question became irrelevant. The plaintiff admitted that he is not claiming title over the property in dispute but he is claiming his right of way. Admittedly, no door is opening towards the side over which the plaintiff is claiming his right of way whereas the door of the plaintiff is opening in just opposite side. After going through the sketch map placed by the plaintiff and Exhibit-A/4, this Court is also of the view that the plaintiff failed to prove his case and, therefore, the order of the revisional authority dated 15.3.2002 is not relevant which has been filed in the year 2005 by the appellant whereas the revision order was passed on 15.3.2002.

In view of the above, I do not find that any substantial question of law is involved in this appeal. Hence, this second appeal is dismissed. So also, the application under Order 41 Rule 27 CPC is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya